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EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS: NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Report of the Secretary-General submitted in accordance with Commission on Human Rights resolution 1998/55

Introduction

1. The Commission on Human Rights, in its resolution 1998/55, reaffirmed the importance of developing effective, independent and pluralistic national institutions for the promotion and protection of human rights, in conformity with the Principles relating to the status of national institutions (adopted by the General Assembly in resolution 48/134 of 20 December 1993).

2. The Commission considered it important for national institutions which conform with the Principles relating to the status of national institutions to participate in an appropriate manner in their own right in meetings of the Commission on Human Rights and its subsidiary bodies. It requested the Secretary-General to submit to the Commission a report including a detailed analysis of the implications of the possible forms of participation by national institutions in these meetings, and considered that existing practices should be continued in the interim to provide for such participation.

3. Pursuant to Commission resolution 1998/55, the present report contains information on the various activities undertaken by the Office of the High Commissioner for Human Rights (OHCHR) to establish and strengthen national institutions, and on the measures taken by national institutions themselves.

I. COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

4. At its nineteenth session, held at Geneva from 16 November to 4 December 1998, the Committee on Economic, Social and Cultural rights adopted, on 1 December, a general comment on the role of national human rights institutions in the protection of economic, social and cultural rights (E/C.12/1998/25). The Committee noted that national human rights institutions had a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights. Unfortunately, this role had too often either not been accorded to the institution or had been neglected or accorded low priority. It was therefore essential that full attention be given to economic, social and cultural rights in all relevant activities of these institutions. Several types of activities could be, and in some instances already had been, undertaken by national institutions in relation to these rights, including:

(a) The promotion of educational and information programmes designed to enhance awareness and understanding of economic, social and cultural rights both within the population at large and among particular groups such as the public service, the judiciary, the private sector and the labour movement;

(b) The scrutinizing of existing laws and administrative acts as well as draft bills and other proposals to ensure that they are consistent with the requirements of the Covenant;

(c) Providing technical advice or undertaking surveys in relation to economic, social and cultural rights, including when requested by the public authorities or other appropriate agencies;

(d) The identification of national-level benchmarks against which the realization of Covenant obligations could be measured;

(e) Conducting research and inquiries designed to ascertain the extent to which particular economic, social and cultural rights are being realized, either within the State as a whole or in areas or in relation to communities of particular vulnerability;

(f) Monitoring compliance with specific rights recognized under the Covenant and providing reports thereon to public authorities and civil society;

(g) Examining complaints alleging violations of applicable economic, social and cultural rights standards within the State.

5. The Committee called upon States parties to ensure that the mandates accorded to all national human rights institutions include appropriate attention to economic, social and cultural rights and requested States parties to include details both on the mandates and the major relevant activities of such institutions in their reports to the Committee.

II. ACTIVITIES OF THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS FOR THE ESTABLISHMENT AND STRENGTHENING OF NATIONAL HUMAN RIGHTS INSTITUTIONS

6. Both the General Assembly and the Commission on Human Rights have requested the High Commissioner for Human Rights to accord priority to the establishment and strengthening of national human rights institutions. Such assistance is now a major component of the technical cooperation programme and is provided, in particular, by and through the Special Adviser to the High Commissioner on National Institutions, Regional Arrangements and Preventive Strategies. This assistance is generally financed by contributions to the Voluntary Fund for Technical Cooperation in the Field of Human Rights which are often specifically earmarked for national institutions. OHCHR activities in support of national institutions can be broadly divided into two areas: the provision of practical advice and assistance to those involved in the establishment of new national institutions or the strengthening of existing ones; and facilitating international and regional meetings of national institutions. In 1998, assistance to such meetings included regional forums both in Africa and Asia.

7. A rapidly growing number of countries in Africa, Asia and the Pacific, Central and Eastern Europe and Latin America were the focus of technical cooperation initiatives in 1998. Establishing an appropriate constitutional or legislative foundation for any new national institution is of primary importance; crucial decisions concerning the nature, functions, powers and responsibilities of the institutions must be taken during the preparatory phase. The Special Adviser on National Institutions provided advice to government authorities, at their request, on suitable models, from a comparative perspective, as well as information and expertise to facilitate the process of legislative drafting. He provided advice or assistance to Governments in the process of establishing national human rights institutions or contemplating the establishment of such institutions in Mauritius, Liberia, Ethiopia, Kenya, Papua New Guinea, Nepal, Bangladesh, Mongolia, Thailand, Jordan, Fiji, the Republic of Korea, Kazakhstan, Uzbekistan, Kyrgyzstan, Armenia and, most recently, Ecuador and Ireland.

8. During the last two years, the Special Adviser also provided support to several recently established national institutions including: the South African Human Rights Commission, the Zambian Human Rights Commission, the Human Rights Commission of Malawi, the Ugandan Human Rights Commission, the Latvian Human Rights Office and the Moldovan Human Rights Centre.

9. Mainstreaming activities relating to the establishment or strengthening of national human rights institutions into the programme of the Office of the High Commissioner is also a priority in the technical cooperation field. Several projects, financed through the Voluntary Fund for Technical Cooperation, are providing support for this specific activity. Recent technical cooperation projects include: capacity development of the National Human Rights Office in Latvia; facilitating the establishment of an independent National Human Rights Institution in the Republic of Moldova; establishment and capacity development of a Human Rights Commission in Papua New Guinea; capacity-building of the Public Defender's Office of Georgia.

10. Three regional projects for the promotion of national human rights institutions in Asia and the Pacific were approved by the Board of Trustees of the Voluntary Fund for Technical Cooperation at its tenth session, held from 30 November to 3 December 1998: a training programme on economic, social and cultural rights; the development of a training programme on investigatory techniques for representatives of national institutions; and a project to support the Third Regional Meeting of the Asia-Pacific Forum of National Human Rights Institutions.

11. Many of these activities have been conducted in close cooperation with the United Nations Development Programme (UNDP). Within the framework of the memorandum of understanding concluded with UNDP in 1998, several projects to establish national institutions were implemented jointly by OHCHR and UNDP, with resources from both organizations (for example, in Albania, Bangladesh, Latvia, Uganda, Republic of Moldova).

III. SECOND CONFERENCE OF AFRICAN NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

12. The Second Conference of African National Institutions was held in Durban, South Africa, from 30 June to 3 July 1998, hosted by the South African Human Rights Commission and convened by the Office of the High Commissioner for Human Rights and the Coordinating Committee of African National Institutions. President Nelson Mandela officially opened the Conference, and keynote addresses were delivered by Mary Robinson, High Commissioner for Human Rights, Mr. Justice Youssoupha Ndiaye, Chairman of the African Commission on Human and Peoples' Rights, and Dr. Solomon Nfor Gwei, Convenor of the Coordinating Committee of African National Institutions. The Conference was attended by 20 national institutions (16 from Africa; 4 from other regions), observers from a number of African or other States, and several major non-governmental organizations. The South African Minister of Justice also attended the Conference.

13. The Conference adopted the "Durban Declaration" at its closing session, in which the African national institutions reaffirmed their attachment to the principles enshrined in the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights and other relevant human rights instruments. Participants also reaffirmed the indivisibility, universality and interdependence of human rights, pursuant to the Vienna Declaration and Programme of Action, and recognized the need to bring the collective voice of Africa to the promotion and effective use of African human rights instruments for the enforcement of human rights. The Durban Declaration welcomed the growing interest shown worldwide in the establishment or strengthening of independent and pluralistic national institutions, particularly in Africa, and reaffirmed the important role that national institutions must play, both with regard to their responsibilities vis-à-vis Governments and their responsibility to promote human rights and provide effective redress when those rights are violated.

14. The Declaration reaffirmed the importance of creating and developing national institutions in African countries, in conformity with the Principles relating to the status of national institutions (Paris Principles), in order

to ensure their credibility, integrity, independence and effectiveness; and encouraged States that have not yet done so to establish such institutions in conformity with the Paris Principles. The importance of adopting National Plans of Action for Human Rights and the coordinating and consultative role of national institutions in producing such Plans was also emphasized.

15. The Durban Declaration recognized that the efficiency of National Institutions is enhanced when they operate in an enabling environment that includes a working democracy, good governance and an independent judiciary. It encouraged the adoption of practical, appropriate and effective human rights education strategies for the general public, with particular focus on law enforcement institutions, such as the police and the military, and in the administration of justice. It also underlined the importance of cooperation between national institutions and civil society, non-governmental organizations and community-based organizations. It urged national institutions to emphasize the promotion and realization of economic, social and cultural rights, the right to development and the eradication of poverty.

16. The Durban Declaration underlined the importance of strengthening national institutions through international, regional and subregional exchanges of expertise, resources and information and encouraged the establishment of subregional forums to facilitate such exchanges. It called on existing national institutions and the Office of the High Commissioner for Human Rights to give support and advice to States in the process of establishing national institutions, and urged States to increase their contribution to the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights for this purpose.

17. The Conference also urged the African Commission on Human and Peoples' Rights to adopt, at its next session, an appropriate resolution on the effective participation of African national institutions in the work of the Commission. It encouraged African States to ratify the Additional Protocol to the African Charter on Human and Peoples' Rights on the establishment of the African Court on Human Rights, and urged States to support the establishment of an independent and effective International Criminal Court. The Conference also welcomed the adoption of the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights, and called on African States to take appropriate steps towards implementation of the Declaration.

18. Finally, the Conference welcomed the convening of the African Ministerial Conference on Human and Peoples' Rights and recommended that national institutions and non-governmental organizations be able to participate appropriately, and decided to transmit the Durban Declaration to the Conference.

19. A report on the progress made in implementing the Durban Declaration will be submitted by the Coordinating Committee of African National Institutions to the Third Conference of African National Institutions in the year 2000.

IV. THIRD ANNUAL MEETING OF THE ASIA-PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

20. The third Annual Meeting of the Asia-Pacific Forum of National Human Rights Institutions, held in Jakarta from 7 to 9 September 1998, was hosted by the Indonesian National Commission on Human Rights. It was co-sponsored by the Office of the High Commissioner for Human Rights and supported by the Australian Agency for International Development.

21. The President of Indonesia officially opened the meeting, and keynote addresses were delivered by the Acting Chair of the Indonesian National Commission on Human Rights and the Special Adviser on National Institutions to the High Commissioner for Human Rights. Representatives of the six national human rights institutions of the Asia-Pacific Forum (Australia, India, Indonesia, New Zealand, the Philippines and Sri Lanka), participated in the meeting, as well as observers from Governments in the process of establishing national institutions in conformity with the Paris Principles (Bangladesh, Fiji, Mongolia, Nepal, Papua New Guinea, the Republic of Korea and Thailand). Observers from international, regional and national non-governmental organizations also attended the meeting.

22. Participants reaffirmed that the status and responsibility of national institutions should be consistent with the Paris Principles and that national institutions should be independent, pluralistic and based on universal human rights standards.

23. The theme for this Conference was "Human Rights and the Economic Crisis in the Asia-Pacific". The Forum expressed its deep concern at the effect of the economic crisis on economic, social and cultural rights, and that the economic crisis should not be used as the occasion for the further restriction of civil and political rights in the region. The Forum requested the High Commissioner for Human Rights to encourage the development and strengthening of mechanisms by which intergovernmental and transnational organizations are made conscious of the human rights consequences of their policies, programmes and activities. The Forum drew the attention of the High Commissioner to the need for international financial institutions to consider how they could best conduct their activities in a manner that furthered the international standards embodied in the International Bill of Rights, including preparing human rights impact statements on their policies and actions.

24. The Forum called on all Governments, to give explicit effect to their commitment to the indivisibility of human rights, including through their input into the policies and actions of international financial institutions and of international and regional economic forums such as the World Trade Organization and the Asia-Pacific Economic Cooperation Council. Forum members also decided to convey their concerns to their respective Governments and to the High Commissioner for Human Rights. Member commissions resolved to give high priority to addressing the human rights consequences of the economic crisis and decided to seek to arrange a workshop on the observance in the region of economic, social and cultural rights.

25. The Forum welcomed the increasing level of technical cooperation activities aimed at the establishment and strengthening of national

institutions. It encouraged member commissions to propose programmes of technical cooperation in consultation and cooperation with OHCHR.

26. It also agreed to establish an Advisory Council of Jurists to assist in developing regional human rights jurisprudence and on terms of reference for the membership and functioning of this Council.

27. The Forum condemned the practice of child sexual exploitation as a gross abuse of human rights. It called upon all Governments in the Asian-Pacific region to take measures to combat child sexual exploitation, including improved law enforcement; to make changes in social policy; and to undertake public education campaigns and measures to assist affected individuals and communities. It suggested to the High Commissioner for Human Rights that the issue of sexual exploitation of children should be a major theme of one of the workshops mandated by the sixth meeting of the United Nations Asia-Pacific Regional Workshop of National Human Rights Institutions held in Tehran in February 1998.

28. Forum members indicated they accord high priority to the human rights of women and to eliminating discrimination against women and they condemned violence against women in all its forms.

29. The Forum endorsed the vital role of civil society in the promotion and protection of human rights and agreed to hold a workshop in 1999 on "National Institutions and Non-Governmental Organizations: Working in Partnership".

30. Participants welcomed the establishment of the Asia-Pacific Forum Website and its linkage to other human rights sites, including the OHCHR Website.

31. The Forum requested the High Commissioner for Human Rights to facilitate close cooperation between national institutions in the Asian-Pacific region and periodic meetings of the Forum, including by ensuring that the necessary resources are available for work relating to national institutions. Participants welcomed the suggestion that the Forum and the High Commissioner should agree to a memorandum of understanding as a basis for their cooperation and requested the secretariat of the Forum to pursue this matter with the Office of the High Commissioner.

32. It also requested the High Commissioner to consider a more equitable allocation of funds for technical assistance to the Asian-Pacific region and, in this context, welcomed the attention given at the sixth United Nations Asia-Pacific Regional Workshop to the establishment and strengthening of national human rights institutions.

33. The Forum reiterated its recommendation that the United Nations should formally recognize the unique status and character of independent national human rights institutions and take further steps to ensure that they are able to participate in their own right in United Nations human rights forums.

34. Finally, the Philippines Commission on Human Rights offered to host the fourth annual meeting of the Asia-Pacific Forum of National Human Rights Institutions in 1999, and this offer was accepted.

V. FIRST MEETING OF MEDITERRANEAN NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

35. The first meeting of Mediterranean National Institutions for the Promotion and Protection of Human Rights was held in Marrakesh, Morocco, from 27 to 29 April 1998. It was organized by the Advisory Council for Human Rights of Morocco, with support from the Office of the High Commissioner for Human Rights and in cooperation with the National Consultative Commission on Human Rights of France.

36. The High Commissioner for Human Rights and the Chairman of the Advisory Council for Human Rights of Morocco addressed the inaugural ceremony. Representatives of national institutions, ombudsmen and mediators from the Mediterranean region participated, as well as observers from non-governmental organizations and various human rights institutions.

37. Working sessions focused on presentation by national institutions of their activities, achievements and prospects and the sharing of experiences; on international and regional cooperation for the promotion and protection of human rights; cooperation for human rights within the framework of follow-up to the Barcelona Declaration adopted in November 1995; and free movement of people and human rights with particular reference to the northern and southern part of the Mediterranean basin.

38. Participants adopted the "Marrakesh Declaration", in which they underlined the need to extend and enhance all forms of cooperation among the countries of the Mediterranean basin, with a view to strengthening and developing existing national institutions, assisting the establishment of such institutions in States where they do not exist and strengthening collaboration between these institutions and non-governmental organizations.

39. Participants paid tribute to the positive action of the High Commissioner for Human Rights in supporting national human rights institutions. They called on the High Commissioner, as well as the European Union, the Council of Europe and the Organization for Security and Cooperation in Europe to provide technical assistance to support national endeavours aimed at promoting and protecting human rights in Mediterranean countries, in particular the countries of the southern shore. In this regard, they welcomed the agreement between the High Commissioner and the Government of Morocco concerning the establishment of a training, information and documentation centre on human rights.

40. Participants also welcomed the prospects raised at the Euro-Mediterranean Conferences held in Barcelona and Malta for cooperation between countries north and south of the Mediterranean towards achieving sustainable human development and shared prosperity. They considered that the organization of a Euro-Mediterranean economic space should be supported by strengthening cooperation in the promotion and protection of human rights, in particular through education and training.

41. Participants recognized the important role played by migrants in their relations, and expressed determination to act, both at the multilateral and the bilateral level, to ensure that migrants from any country are treated in

full compliance with human rights, basic freedoms and humanitarian principles. They invited States to ratify the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their families.

42. Participants affirmed that national sovereignty should not be exercised at the expense of respect for human rights, and that real efforts towards the co-development of countries north and south of the Mediterranean, as well as the strengthening of the rule of law, would contribute to reducing erratic migratory flows and facilitate economic cooperation, mutual understanding and cultural exchanges.

43. Participants also affirmed their strong wish, following the fourth International Workshop on Ombudsman and National Human Rights Institutions held in Mérida, Mexico in November 1997, to see the High Commissioner for Human Rights take concrete measures to strengthen the participation of national institutions in international forums, such as the Economic and Social Council and the Commission on Human Rights.

44. Finally, participants decided to establish a committee, composed of the Chairpersons of national human rights institutions who participated in the first Mediterranean meeting, to follow up on the conclusions and recommendations of the Marrakesh Declaration.

VI. MEETINGS OF THE COORDINATING COMMITTEE OF NATIONAL INSTITUTIONS

45. The Coordinating Committee, created pursuant to a recommendation by the International Workshop on National Institutions for the Promotion and Protection of Human Rights held in Tunis, in December 1993, and endorsed by the Commission on Human Rights in resolution 1994/54, constitutes an international network promoting the establishment and strengthening of national human rights institutions in conformity with the Paris Principles. It encourages international coordination of activities and cooperation among national institutions; organizes international workshops of national institutions; liaises with the Office of the High Commissioner for Human Rights and other international organizations concerned with the promotion and protection of human rights and, upon request, assists Governments to establish a national institution.

46. The High Commissioner for Human Rights addressed the opening session of the Coordinating Committee, and said she attached the highest priority to the establishment and strengthening of national institutions. The High Commissioner pointed to the need to encourage the establishment of more national institutions in conformity with the Paris Principles, but indicated that the Special Adviser on National Institutions was already working in more than 40 countries. Additional staff and financial resources were necessary to conduct the programme, and this required more contributions to the Voluntary Fund for Technical Cooperation. The importance of regional cooperation in strengthening national institutions was also emphasized by the High Commissioner.

47. At its sixth meeting, held in Geneva on 2, 3 and 6 April 1998, in conjunction with the annual session of the Commission on Human Rights, the

Coordinating Committee considered in detail provisional rules of procedure for its work, on the basis of a draft introduced by the Chairperson, the Chief Commissioner of the New Zealand Human Rights Commission. (The provisional rules adopted by the Coordinating Committee at its meeting on 6 April 1998 will be submitted to the next International Workshop for ratification.)

48. It was agreed that the Coordinating Committee would be expanded to 16 members, with 4 members elected from among each regional group for a two-year renewable term according to the following regional groupings: Africa, Europe, the Americas and the Asian-Pacific region. As an interim arrangement, the following membership of the Committee was agreed:

Europe:	Danish Centre for Human Rights; Latvian National Human Rights Office; Consultative Commission on Human Rights of France; Swedish Ombudsman against Ethnic Discrimination.
Africa:	Advisory Council for Human Rights of Morocco; South African Human Rights Commission; National Human Rights Commission of Togo; National Commission on Human Rights and Freedoms of Cameroon.
Americas:	Canadian Human Rights Commission; National Commission for Human Rights of Mexico; *Defensoria de los Habitantes* of Costa Rica; *Defensor del Pueblo de la Nación* of Argentina.
Asia-Pacific:	National Human Rights Commission of India; Commission on Human Rights of the Philippines; Human Rights and Equal Opportunity Commission of Australia; Human Rights Commission of New Zealand.

49. During the meeting, it was also decided that the National Human Rights Commission of India would continue to chair the Coordinating Committee for one year during this transitional period. The National Commission for Human Rights of Mexico was nominated as Vice-Chair. It was also agreed to establish a membership subcommittee, to be called the Accreditation Committee, in accordance with the provisional rules of procedure, consisting of one representative of each of the four regions. The Coordinating Committee named the national institutions of Canada, France, Cameroon and Australia as members of this committee. Any national institution seeking membership in the Coordinating Committee should apply to its Chairperson and supply, in support of its application: a copy of the legislation or other instrument by which it is established; an outline of its organizational structure, including staff and annual budget; a copy of its most recent annual report or equivalent document; and a detailed statement indicating its compliance with the Paris Principles or an outline indicating in what respects it does not comply and any proposals to ensure eventual compliance.

50. All questions of membership in the Coordinating Committee including whether a national institution complies with the Paris Principles, will be decided by the Committee. No negative decision will be made without consultation with the institution concerned. The Committee may consult with any national institution concerning compliance with the Paris Principles. Any

national institution whose application for membership is declined may, with the consent of the Committee, attend meetings or workshops as an observer and reapply for membership at any time.

51. Only national institutions which comply with the Paris Principles will be eligible to be members of the group of national institutions. Only one national institution per State will be eligible to be a voting member.

52. Membership of the Coordinating Committee is the prerogative of a national institution, not of any individual.

53. Meetings of the Coordinating Committee will be held in conjunction with the annual session of the Commission on Human Rights, and with the biannual international meeting of national institutions. Otherwise, the Coordinating Committee will meet at such times and places as it determines. Representatives of national institutions established in accordance with the Paris Principles other than Committee members may attend meetings and the Chairperson, after consultation with members, may invite national institutions not members of the Committee and any other person or institution to participate in the work of the Coordinating Committee as an observer without the right to vote.

54. During the meeting, the representatives of the Advisory Council for Human Rights of Morocco offered to host the next International Workshop on National Institutions in Marrakesh.

VII. PARTICIPATION BY NATIONAL INSTITUTIONS IN MEETINGS OF THE COMMISSION ON HUMAN RIGHTS AND ITS SUBSIDIARY BODIES

55. Over the last five years, the issue of participation by national institutions in meetings of the Commission on Human Rights and its subsidiary bodies has been the subject of several proposals and resolutions of the Commission on Human Rights and the General Assembly.

56. At the Vienna World Conference on Human Rights in June 1993, national institutions participated in debates de jure, and not merely de facto. On several occasions, the Secretary-General has sent notes verbales to Governments, national human rights institutions and intergovernmental organizations requesting their views concerning possible forms of participation by national institutions in such meetings. The majority of Governments and national institutions which responded expressed the view that such institutions should be granted a distinct status, independent of their government delegation, so that they could participate in their own right in debates of the Commission on Human Rights and other human rights meetings.

57. In the 1998 report of the Secretary-General on national institutions (E/CN.4/1998/47), three options were noted concerning participation by national institutions: (a) be part of the delegation of their Government and be granted part of the delegation's speaking time; (b) be part of the delegation of their Government and be granted separate speaking time, in addition to that of the delegation; (c) participate in meetings in their own right with separate speaking time.

58. At the fifty-second session of the Commission on Human Rights, the Chairman decided to introduce an interim arrangement whereby national institutions could speak from the seat of their Government's delegation, but in their own right and with separate speaking time, during consideration of the item of the agenda item relating to national institutions. This arrangement was maintained at the fifty-third session of the Commission. At the fifty-fourth session of the Commission, the Chairman decided that national institutions addressing the Commission could do so from a special section of the floor, set aside specifically for this purpose, under the name plate "National Institutions". Eighteen national institutions from all regions each received seven minutes' speaking time during consideration of the item on national institutions.